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June 16, 2008

FCC APPEAL

CC Docket No: 02-6

Request for Review of Case # **21-719669**

On April 15, 2008, USAC denied the Appeal on FRNs 1621272 & 1621284. The reason for the denial was not compliance on the 28 day waiting period. While technical correct in their ruling they gave no latitude in the intent and diligence that the District took in developing and implementing the RFP. We believe that every effort was taken for a fair and competitive bidding process.

Brief Description: The District Tech Director was to post the Form 470 on December 29, 2005, on that date the District posted an RFP for services. The due date was January 26, 2006. Due to a technical error (not sure on whose part) the Form 470 was not posted until January 6, 2006. The District then extended the deadline until February 4, 2006 and awarded a contract on February 14, 2006. Attached is the supporting statements from the various vendors that bid on the project.

The facts and basis for this appeal have not changed from the original appeal to USAC. Therefore, the information that is included is the same that was sent to USAC. We believe that there is a clear intent for the District to honor the 28 day period and the decision by USAC should be overturned.

This decision has cost the District a great amount of funding that could have been used for improving technology and the education of the students in District 11. The intent of the eRate program is to increase technology to all students. The funding of Priority II items is necessary in areas and schools that qualify. To lose funding on a technicality is really a shame. Especially when the District did follow the guidelines but failed to change the date on the RFP.

The following pages are the documents used for the Appeal to USAC and remain the same for this appeal.



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March 15, 2008

Letter of Appeal  
Schools & Libraries Division – Correspondence Unit  
100 South Jefferson Road  
P.O. Box 902  
Whippany, New Jersey 07981

Appeal Reviewer:

This is a “Letter of Appeal” for Form 471 Application 580508 and associated FRNs:

**1621272 & 1621284**

Case # **21-719669**

Contact Information

Appellant Names:

Dr. Jim Earle, Consultant

Applicant Name & BEN:

**Colorado Springs School District 11**

**BEN # 142312**

471 Reference & Funding Year:

**Form 471: 580508**

**Funding Year: 2007-2008**

Service Provider Information:

**SPIN: 143017760**

**FRN: 1621272**

Service Provider Information:

**SPIN: 143017760**

**FRN: 1621284**

**Text of Denial:**



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**"The referenced RFP was not available for  
28 days after the filing of the Form 470."**

### **Rational for Appeal:**

The District posted the original RFP for the services requested on December 29, 2005. This posting date was based upon the date that the District Administration was told by the Technology Director that the Form 470 was posted on that date. We later learned that the posting did not occur until January 6, 2006. The Original due date for response to the RFP was as stated in an email from Jessica Olsen as January 26, 2006. Which was less than the 28 days as required. The District contacted the bidders and set the opening of the bids back to February 4, 2006 and did not award a contract until February 14, 2006. The due date was not officially changed on the RFP, however, all bidders were contacted and companies that would have vendors bidding on this proposal were contacted. We were informed that no other bids were forthcoming.

The District waited until after the 28 day posting period on the Form 470 and opened the bids and awarded the contract on February 14<sup>th</sup>. The District made every attempt to comply with the requirements of the bidding process. The District received multiple bids and contacted multiple vendors for bids. Price was a primary factor, as is with all bids from the District.

USAC has all of the responses sent to the program reviewer and We believe that that information is correct. We believe that an error was made in the decision on denial on the 28 day waiting period. The technical decision was correct due that the change in the deliverable date for the RFPs was not changed on the RFP or website. However, the fact that every effort to ensure that all potential bidders knew that the decision would be delayed until the 28 day waiting period to comply with the Form 470 requirements was ignored by the USAC review process. The fact that bids were not opened until after the 28 day waiting period and the contract was awarded on the 14<sup>th</sup> of February are strong indications of the District's attempt to comply with the requirements.



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We sincerely hope that the appeal of this decision will be reversed and the FRNs approved as being in compliance with program rules and regulations and the intent of the program was met by the District.



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The following information is provided to support the District's effort.

email from Program Reviewer and District response:

Date: 11/20/07  
To: Raymond Caplinger  
Entity: COLORADO SPRINGS SCH DIST 11  
Sender: Jessica Olsen  
Phone: 973-581-5062  
Fax: 973-599-6515  
E-mail: [jolsen@sl.universalservice.org](mailto:jolsen@sl.universalservice.org)  
Subject: Funding year 2007 E-Rate

**3) FRNs 1621272 and 1621284:**

• ***RFP:***

"In response to the Selective Review Information Request, you have provided a Request for Proposal (RFP), upon review we find that the RFP #2006-0011 was not available for 28 days after the filing of the Form 470. Your Form 470 978580000572846 was posted on 1/6/06 but your RFP due date was 1/26/06.

Based on this documentation the following FRNs 1621272 and 1621284 will be denied. "

Response by Ray Caplinger:

"What happened here is that the RFP was posted to the District web site on 29 December 2005. I submitted a 470 application the same day and then went on Christmas and New Year's break, since there was nothing else to do but wait until the responses started coming in. When I got back from the break, I checked the SLD web site and found that the RFP did not post for some reason. I recreated the file and submitted it, but it would not allow me to change the date to the original posting date. Therefore, we used the 3 February (allowable contract date) date as our cutoff time and did not start any evaluations until 4 February and then finally awarded a contract on 14 February. In hind sight, to eliminate any confusion, we probably should have



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issued an amendment. This would have cleared up any subsequent questions. See attachment 6 – our contracting office statement of facts.”



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### **Additional Information:**

The "Statement of Facts" referenced above is included at the end of this document.

emails from Company representative that would have had vendors bidding on the RFPs.

### **CISCO SYSTEMS Representative**

**From:** Tom Hanson (thanson) [<mailto:thanson@cisco.com>]

**Sent:** Monday, March 10, 2008 4:11 PM

**To:** CAPLINGER, RAY

**Subject:** FW: Erate bid at Coloado Springs School District 11

To Whom it may concern,

In December of 2005, I as the Cisco Account Manager for Colorado Springs School District 11 contacted several Cisco Value Added Resellers and encouraged them to submit a bid for potential hardware/switching opportunities posted by School District 11. As I recall I contacted several Cisco Gold resellers to include, Flair Data Systems, MSN Communications, ISC, and GTRI. I followed up with information to the resellers the first and last week of January 2006 on the nature and status of the School District 11 posting. Each reseller indicated to me that they would review the opportunities posted from Colorado Springs School District 11 and then make a business decision as to whether or not they would compete for the business knowing that it would be very competitive. I am not in fact sure how many of the resellers I contacted actually submitted a bid for that business.

Sincerely,

Thomas Hanson

Cisco Systems Inc.  
Office: 720.875.1288  
Mobile: 719.661.2281  
Pager: 800.365.4578  
[thanson@cisco.com](mailto:thanson@cisco.com)



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**Foundry Networks Representative**

**From:** James Rader [<mailto:jrader@foundrynet.com>]

**Sent:** Tuesday, March 11, 2008 4:00 PM

**To:** CAPLINGER, RAY

**Subject:** District #11 RFP process recollections

Ray,

Good to hear from you! Here are my recollections of the District #11 Networking RFP process. I provided the District staff with I believe at least 5 HP ProCurve Elite partners to enable you to submit the RFP to for a competitive bid. If I remember correctly those resellers were as follows: Lewan and Associates, Proactive Network Management, CounterTrade, MSE, and Valcom. Before the bid was released I also remember your procurement person contacting me over the phone to discuss our authorized ProCurve partner program and I provided her with the same information for those authorized resellers and discussed the advantages of purchasing from an authorized ProCurve Elite partner. I can't be sure but I did think she was planning to send the RFP directly to those resellers I provided so you may also want to check with her on that? I do remember also speaking directly with most if not all of those resellers to make them aware of the opportunity and I do remember some of those resellers choosing not to bid due to the belief that the district would more likely choose to purchase Cisco rather than HP due to the fact that Cisco was the installed base at the time of the RFP. Obviously, MSE was interested in pursuing the bid but I also thought that CounterTrade submitted a bid too but it sounds like they did not for whatever reasons. **I do also remember the bid being extended for a period of time for some reason** but can't remember what it was, Holiday schedule perhaps? **I certainly believe due diligence was done on behalf of the District to provide a fair and equitable process for vendors and resellers** alike to participate in the bid process for consideration of their solutions. I hope this helps. Best regards,

**Jim Rader**  
**Regional Sales Manager - Colorado**  
**Foundry Networks**  
**8101 East Prentice Avenue**  
**Suite 950**  
**Englewood, CO 80111**





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[jrader@foundrynet.com](mailto:jrader@foundrynet.com)

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303-489-1092 cell



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**Comments related to email from the representative:**

I believe that these emails indicate that the Colorado Springs School District made every effort to apply "Fair and Competitive Bids" and the intent to meet the requirements as defined by the USAC-SLD Form 470 requirements. The only fault was that the posted date was not changed officially on the District web site. This date was changed for the implementation of the bid process and the vendors were contacted as to that status and no further bids or inquiries were received prior to the awarding of the contract.

**STATEMENT of FACTS Letter:**

A copy of this is in the USAC review files, Copy attached to this document.



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FEB-26-2008 TUE 02:32 PM INFO TECHNOLOGY DIV.

FAX NO. 713 5202973

P. 11



July 11, 2007, Florida, San Antonio

**STATEMENT OF FACTS**  
**RFP S2006-0011 - POSTING FOR 28 DAYS**  
**FRNs 1621272 and 1621284**

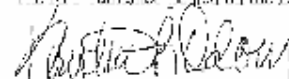
**Background**

RFP S2006-0011 was posted on the Colorado Springs School District No. 11 website on 12/23/2005 (see attachment). All responses were received 1/26/2006. No late submissions were received or rejected.

Calls were made to the CISO (Tom Hansen) and RP (Jim Raider) Regional Representatives to verify if any other business partners were submitting proposals. All the representatives could verify is that they had contacted qualifying business partners and those that had submitted proposals were the only partners interested.

Because of the SLD posting (1/6/2006), evaluations didn't begin until 2/1/2006. The contract was awarded on 2/14/2006.

Conclusion: There was a 28 day period from time posted on the website until responses were received (12/23/2005 through 1/26/2006). Since there were no requests for extensions or late proposals received or rejected, and since evaluations didn't begin until 2/1/2006, it is the belief that the 28 day period was honored for the intent it is written. The RFP remained posted on the District website until the contract was awarded.

  
Christine P. Odern  
District Contracting Officer  
November 19, 2007

PROCUREMENT AND CONTRACT MANAGEMENT  
1000 N. GARDEN ST. SUITE 1000 • WICHITA, KS 67202 • FAX 316.267.0001

**ATCH 6**



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### **Final Statements in Support of the Appeal:**

The District has complied with the intent of the rules of the eRate program. There was no attempt to violate any program rules or regulations. The vendors involved in the process were satisfied that the process was fair and competitive. The bidding period was greater than 28 days and the awarding of the contract was actually 39 days after the posting of the Form 470.

Colorado Springs is one of the largest school districts in the State of Colorado and has an excellent reputation on following procedures and practices to comply with State and Federal regulations. We have not been successful in working within the eRate program and have missed out on funding due to internal mistakes. The District should not be penalized for violation of the 28 day posting rule, especially since it did wait more than the 28 days and made every effort to contact and notify vendors as to the process.

Your consideration of this appeal is greatly appreciated and we will be happy to supply any further information or clarification that you may need.

Sincerely,

# Jim Earle

Dr. Jim Earle  
Consultant  
Colorado Springs District 11  
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866-858-2202  
Fax: 866-858-1101  
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